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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 SHALOM AMAR, et al.,

9 Plaintiff(s),

10 v.

11 LSREF 2 APEX 2, LLC, et al.,

12 Defendant(s).
13

2:12-CV-969 JCM (RJJ)

14 **ORDER**

15 Presently before the court is defendant LSREF2 Apex 2, LLC's ("Apex 2") motion for
16 attorneys' fees and costs. (Doc. #36). Plaintiff did not file an opposition.

17 **I. Background**

18 This case arises out of several allegations related to plaintiffs' purchase of a 32-unit
19 apartment building located at 589 Sierra Vista Drive, Las Vegas, Nevada (the "property"). As relief,
20 plaintiffs sought to rescind the contract that governed the purchase of the property, which had a
21 purchase price of \$950,000.00. On June 7, 2012, Apex 2 removed the case to this court on the basis
22 of diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Doc. #1). On June 14, 2012, Apex 2 moved
23 to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. #5). On November 8, 2012, the
24 court granted Apex 2's motion to dismiss. (Doc. #33). Judgment was entered in favor of Apex 2 and
25 against plaintiffs. (Doc. #34).

26 Apex 2 now moves to recover its attorneys' fees in the amount of \$27,561.75 and taxable
27 costs in the amount of \$412.75 incurred in connection with this matter. (Doc. #36). Plaintiffs did
28

1 not file an opposition.

2 **II. Legal Standard**

3 Federal Rule of Civil Procedure 54(d)(2)(B)(ii) provides that a motion for attorneys' fees
4 must "specify the judgment and the statute, rule, or other grounds entitling the movant to the award."
5 "A party moving for attorney's fees must therefore assert an independent source of authority for an
6 award." *Gallagher v. Crystal Bay Casino, LLC*, no. 3:08-cv-00055, 2012 WL 1409244, at *2 (D.
7 Nev. April 20, 2012).

8 In an action where a district court is exercising its subject matter jurisdiction over a state law
9 claim, so long as "state law does not run counter to a valid federal statute or rule of court, and usually
10 it will not, state law denying the right to attorney's fees or giving a right thereto, which reflects a
11 substantial policy of the state, should be followed." *Alyeska Pipeline Serv. Co. V. Wilderness Soc'y*,
12 421 U.S. 240, 259 n.31 (1975) (quoting Moore's Federal Practice § 54.77[2] (2d ed. 1974)). N.R.S.
13 §18.010(1) provides that, "the compensation of an attorney and counselor for his or her services is
14 governed by agreement, express or implied, which is not restrained by law." "Nevada follows the
15 American rule that attorney fees may not be awarded absent a statute, rule, or contract authorizing
16 such award." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90 (Nev. 2006).

17 **III. Discussion**

18 The court applies general rules of contract interpretation when interpreting a contract
19 provision that provides for attorneys' fees. As such, the court "will not construe [an attorneys' fees
20 contract] provision to have broader application." *Campbell v. Nocilla*, 101 Nev. 9, 12 (Nev. 1985).
21 In *Campbell*, the Supreme Court of Nevada reversed a decision to award attorneys' fees to the
22 respondent because the contract provision did not expressly allow for recovery under the
23 circumstances presented. *Id.* The contract provision stated, "In case suit is brought to enforce this
24 contract, I [appellants] agree to pay reasonable attorney's fees as the court may fix in said suit." *Id.*
25 (edit in original). The court noted that the appellants' suit was not brought to enforce the terms of
26 the contract; the suit had been brought for the purpose of indemnification. *Id.* Accordingly, the court
27 reversed the award for damages. *Id.*; see also *First Commercial Title v. Holmes*, 92 Nev. 363 (Nev.

1 1976) (overturning an award for attorneys' fees when the action sought was to enjoin a trustee's sale,
 2 not the grounds mentioned in the provision – commencement of a suit for collection on the
 3 promissory note).

4 Here, Apex 2 argues that it is entitled to recover attorneys' fees pursuant to § 11.10 of the
 5 purchase agreement. (Doc. #36-1). Specifically, § 11.10 states:

6 In the event it becomes necessary for either party hereto to file suit to
 7 enforce this Agreement or any provisions contained herein, the party
 8 prevailing in such suit shall be entitled to recover, in addition to all
 other remedies or damages, as provided herein, reasonable attorneys'
 fees and expense s incurred in such suit.

9 See Purchase Agreement, § 11.10. (Doc. #36-1).

10 Apex 2 construes this provision to mean that “the attorneys' fees and costs incurred by Apex
 11 2 in defending itself against plaintiffs' . . . claims are recoverable pursuant to the purchase
 12 agreement.” (Doc. #36). However, like *Campbell*, where the attorneys' fees contract provision did
 13 not expressly allow for recovery under the circumstances presented; here, § 11.10 does not allow for
 14 recovery under these circumstances. The plain language of the attorneys' fees provision states, “In
 15 the event it becomes necessary for either party to file suit to enforce this Agreement” (Doc. #36-
 16 1). Plaintiffs did not file suit to seek enforcement of the contract. Rather, plaintiffs filed suit seeking
 17 rescission of the contract. The attorneys' fees provision does not apply because it does not expressly
 18 allow for recovery when a party files suit seeking rescission of the contract. Therefore, the court
 19 cannot grant Apex 2's motion.

20 By Apex 2's own admission, this purchase agreement (doc. #36-1) is the contract that the
 21 parties entered into. Under the attorneys' fees contract provision of the agreement (doc. #36-1),
 22 recovery of attorneys' fees requires that the suit be filed to enforce the contract or its provisions.
 23 Had the suit sought enforcement of the contract and had Apex 2 prevailed, the attorneys' fees
 24 provision would have governed payment of fees Apex 2 now seeks.¹ Alternatively, had the provision
 25 provided for attorneys' fees to the prevailing party for *any* litigation involving the property, the
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27 ¹ Regardless, the court questions the admissibility of the purchase agreement because it is not signed by both
 28 parties.

1 outcome would have been different. While the court acknowledges the cost and burden of defending
2 against suit; the court cannot construe an agreement beyond the boundaries contemplated by the
3 parties.

4 **IV. Conclusion**

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion for
7 attorneys' fees and costs (doc. # 36) be, and the same hereby, is DENIED.

8 DATED January 23, 2013.

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11 UNITED STATES DISTRICT JUDGE
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